

1 CENTER FOR DISABILITY ACCESS  
2 Raymond Ballister Jr., Esq., SBN 111282  
3 Russell Handy, Esq., SBN 195058  
4 Amanda Seabock, Esq., SBN 289900  
5 Zachary Best, Esq., SBN 166035  
6 Mail: 8033 Linda Vista Road, Suite 200  
7 San Diego, CA 92111  
8 (858) 375-7385; (888) 422-5191 fax  
9 amandas@potterhandy.com

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11 Attorneys for Plaintiff

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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

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21 **Samuel Love,**  
22 Plaintiff,  
23  
24 v.  
25  
26 **Panion Group, LLC**, a California  
27 Limited Liability Company;  
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1 owns and operates the Country Inn & Suites by Radisson located at 1350 N.  
2 4th St., San Jose, California, currently and at all times relevant to this  
3 complaint.

4 3. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein, is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13

14 **JURISDICTION:**

15 4. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California's Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 6. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26 **PRELIMINARY STATEMENT**

27 7. This is a lawsuit challenging the reservation policies and practices of a  
28 place of lodging. Plaintiff does not know if any physical or architectural

1 barriers exist at the hotel and, therefore, is not claiming that that the hotel has  
2 violated any construction-related accessibility standard. Instead, this is about  
3 the lack of information provided on the hotel's reservation website that would  
4 permit plaintiff to determine if there are rooms that would work for him.

5 8. After decades of research and findings, Congress found that there was  
6 a "serious and pervasive social problem" in America: the "discriminatory  
7 effects" of communication barriers to persons with disability. The data was  
8 clear and embarrassing. Persons with disabilities were unable to "fully  
9 participate in all aspects of society," occupying "an inferior status in our  
10 society," often for no other reason than businesses, including hotels and  
11 motels, failed to provide information to disabled travelers. Thus, Congress  
12 decided "to invoke the sweep of congressional authority" and issue a "national  
13 mandate for the elimination of discrimination against individuals with  
14 disabilities," and to finally ensure that persons with disabilities have "equality  
15 of opportunity, full participation, independent living" and self-sufficiency.

16 9. As part of that effort, Congress passed detailed and comprehensive  
17 regulations about the design of hotels and motels. But, as importantly,  
18 Congress recognized that the physical accessibility of a hotel or motel means  
19 little if the 61 million adults living in America with disabilities are unable to  
20 determine which hotels/motels are accessible and to reserve them. Thus,  
21 there is a legal mandate to provide a certain level of information to disabled  
22 travelers.

23 10. But despite the rules and regulations regarding reservation procedures,  
24 a 2019 industry article noted that: "the hospitality sector has largely  
25 overlooked the importance of promoting accessible features to travelers."

26 11. These issues are of paramount important. Persons with severe  
27 disabilities have modified their own residences to accommodate their unique  
28 needs and to ameliorate their physical limitations. But persons with disabilities

1 are never more vulnerable than when leaving their own residences and having  
2 to travel and stay at unknown places of lodging. They must be able to ascertain  
3 whether those places work for them.

4

5 **FACTUAL ALLEGATIONS:**

6 12. Plaintiff planned on making a trip in March of 2021 to the San Jose,  
7 California, area.

8 13. He chose the Country Inn & Suites by Radisson located at 1350 N. 4th  
9 St., San Jose, California because this hotel was at a desirable price and location.

10 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in  
11 his ability to, stand, ambulate, reach objects, transfer from his chair to other  
12 equipment, and maneuver around fixed objects.

13 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given  
14 information about accessible features in hotel rooms so that he can confidently  
15 book those rooms and travel independently and safely.

16 16. On January 2, 2021, while sitting bodily in California, Plaintiff went to  
17 the Country Inn & Suites by Radisson reservation website at  
[https://www.radissonhotels.com/en-us/hotels/country-inn-san-jose-airport-  
ca/](https://www.radissonhotels.com/en-us/hotels/country-inn-san-jose-airport-ca/) seeking to book an accessible room at the location.

18 17. This website reservation system is owned and operated by the  
19 Defendants and permits guests to book rooms at the Country Inn & Suites by  
20 Radisson.

21 18. Plaintiff found that there was insufficient information about the  
22 accessible features in the "accessible rooms" at the Hotel to permit him to  
23 assess independently whether a given hotel room would work for him.

24 19. For example, Plaintiff often uses a type of wheelchair that he cannot get  
25 wet when he showers. He needs to roll into the shower enclosure and then  
26 transfer to an in-shower seat and push his chair out of the path of the water. But

1 there is no information on the Hotel reservation website about whether the  
2 roll-in shower has an in-shower seat or any grab bars mounted above the seat  
3 for transfer (required by the ADA). So, Plaintiff can assume he can roll into that  
4 shower but has no other information about whether he can use this shower.

5 20. As another example, Plaintiff has had tremendous difficulty with using  
6 lavatory sinks in the past because sinks were cabinet style sinks or had low  
7 hanging aprons that did not provide knee clearance for a wheelchair user to  
8 pull up and under or, alternatively, where the plumbing underneath the sink  
9 was not wrapped with insulation to protect against burning contact to his  
10 knees. Here, the Hotel reservation website provides no information about the  
11 accessibility of the sinks in the accessible guestroom.

12 21. As another example, Plaintiff needs doorways that are at least 32 inches  
13 wide so he can get his wheelchair through. Without this feature, Plaintiff risks  
14 getting stuck in a doorway, or being prevented from passing through the  
15 doorway at all. The website does not mention that the hotel room has this  
16 feature.

17 22. Plaintiff does not need an exhaustive list of accessibility features.  
18 Plaintiff does not need an accessibility survey to determine of a room works for  
19 him. Plaintiff, like the vast majority of wheelchair users, simply needs a  
20 handful of features to be identified and described with a modest level of detail:

- 21 • For the doors, Plaintiff simply needs to know if he can get into the hotel  
22 room and into the bathroom. This is a problem that has created  
23 tremendous problems for the Plaintiff in the past. A simple statement  
24 that the hotel room entrance and interior doors provide at least 32  
25 inches of clearance is enough to provide Plaintiff this critical piece of  
26 information about whether he can fit his wheelchair into the hotel  
27 rooms.
- 28 • For the beds themselves, the only thing Plaintiff needs to know (and the

1 only thing regulated by the ADA Standards) is whether he can actually  
2 get to (and into) the bed, i.e., that there is at least 30 inches width on the  
3 side of the bed so his wheelchair can get up next to the bed for transfer.  
4 This is critical information because Plaintiff cannot walk and needs to  
5 pull his wheelchair alongside the bed.

- 6 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to  
7 know that it has sufficient knee and toe clearance so that he can use it.  
8 A simple statement like “the desk provides knee and toe clearance that  
9 is at least 27 inches high, 30 inches wide, and runs at least 17 inches  
10 deep” is more than sufficient. Because Plaintiff is confined to a  
11 wheelchair, he needs to know this information to determine if the desk  
12 is accessible to and useable by him.
- 13 • For the restroom toilet, Plaintiff only needs to know two things that  
14 determine if he can transfer to and use the toilet; (1) that the toilet seat  
15 height is between 17-19 inches (as required by the ADA Standards) and  
16 (2) that it has the two required grab bars to facilitate transfer.
- 17 • For the restroom sink, the Plaintiff two things that will determine  
18 whether he can use the sink from his wheelchair: (1) can he safely get his  
19 knees under the toilet? To wit: does the sink provide the knee clearance  
20 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing  
21 under the sink wrapped with insulation to protect against burning  
22 contact? The second thing is whether the lavatory mirror is mounted at  
23 a lowered height so that wheelchair users can see it. A simple statement  
24 like: “the lavatory sink provides knee clearance of at least 30 inches  
25 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing  
26 is wrapped, and the lowest reflective edge of the mirror is no more than  
27 40 inches high” would suffice.
- 28 • Finally, for the shower, Plaintiff needs to know only a handful of things:

1 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-  
2 in), (2) whether it has an in-shower seat; (3) that there are grab bars  
3 mounted on the walls; (4) that there is a detachable hand-held shower  
4 wand for washing himself and (5) that the wall mounted accessories and  
5 equipment are all within 48 inches height.

6 23. This small list of items are the bare necessities that Plaintiff must know  
7 to make an independent assessment of whether the “accessible” hotel room  
8 works for him. These things comprise the basics of what information is  
9 reasonably necessary for Plaintiff (or any wheelchair user) to assess  
10 independently whether a given hotel or guest room meets his or her  
11 accessibility needs.

12 24. Other accessibility requirements such as slopes of surfaces, whether the  
13 hand-held shower wand has a non-positive shut off valve, the temperature  
14 regulator, the tensile strength and rotational design of grab bars, and so many  
15 more minute and technical requirements under the ADA are beyond what is a  
16 reasonable level of detail and Plaintiff does not expect or demand that such  
17 information is provided.

18 25. But because the Defendants have failed to identify and describe the core  
19 accessibility features in enough detail to reasonably permit individuals with  
20 disabilities to assess independently whether a given hotel or guest room meets  
21 his accessibility needs, the Defendants fail to comply with its ADA obligations  
22 and the result is that the Plaintiff is unable to engage in an online booking of  
23 the hotel room with any confidence or knowledge about whether the room will  
24 actually work for him due to his disability.

25 26. This lack of information created difficulty for the Plaintiff and the idea  
26 of trying to book this room -- essentially ignorant about its accessibility --  
27 caused difficulty and discomfort for the Plaintiff and deterred him from  
28 booking a room at the Hotel

1       27. Plaintiff travels frequently and extensively, not only for non-litigation  
2 reasons but also because he is an ADA tester and actively engaged in finding  
3 law breaking businesses and hauling them before the courts to be penalized  
4 and forced to comply with the law.

5       28. As he has in the past, Plaintiff will continue to travel to the San Jose area  
6 on a regular and ongoing basis and will patronize this Hotel once it has been  
7 represented to him that the Defendant has changed its policies to comply with  
8 the law and to determine if the Hotel is physically accessible as well as  
9 complying with required reservation procedures. Plaintiff will, therefore, be  
10 discriminated against again, i.e., be denied his lawfully entitled access, unless  
11 and until the Defendant is forced to comply with the law.

12       29. Plaintiff has reason and motivation to use the Defendant's Hotel  
13 reservation system and to stay at the Defendant's Hotel in the future. Among  
14 his reasons and motivations are to assess these policies and facilities for  
15 compliance with the ADA and to see his lawsuit through to successful  
16 conclusion that will redound to the benefit of himself and all other similarly  
17 situated. Thus, Plaintiff routinely revisits and uses the facilities and  
18 accommodations of places he has sued to confirm compliance and to enjoy  
19 standing to effectuate the relief promised by the ADA.

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24       30. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint.

27       31. Under the ADA, it is an act of discrimination to fail to make reasonable  
28 modifications in policies, practices, or procedures when such modifications

1 are necessary to afford goods, services, facilities, privileges advantages or  
2 accommodations to person with disabilities unless the entity can demonstrate  
3 that taking such steps would fundamentally alter the nature of the those goods,  
4 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §  
5 12182(B)(2)(A)(ii).

6 32. Specifically, with respect to reservations by places of lodging, a  
7 defendant must ensure that its reservation system, including reservations  
8 made by “any means,” including by third parties, shall:

- 9 a. Ensure that individuals with disabilities can make  
10 reservations for accessible guest rooms during the same  
11 hours and in the same manner as individuals who do not  
12 need accessible rooms;
- 13 b. Identify and describe accessible features in the hotels and  
14 guest rooms offered through its reservations service in  
15 enough detail to reasonably permit individuals with  
16 disabilities to assess independently whether a given hotel  
17 or guest room meets his or her accessibility needs; and
- 18 c. Reserve, upon request, accessible guest rooms or specific  
19 types of guest rooms and ensure that the guest rooms  
20 requested are blocked and removed from all reservations  
21 systems.

22 *See 28 C.F.R. § 36.302(e).*

23 33. Here, the defendant failed to modify its reservation policies and  
24 procedures to ensure that it identified and described accessible features in the  
25 hotels and guest rooms in enough detail to reasonably permit individuals with  
26 disabilities to assess independently whether a given hotel or guest room meets  
27 his or her accessibility needs and failed to ensure that individuals with  
28 disabilities can make reservations for accessible guest rooms during the same

1 hours and in the same manner as individuals who do not need accessible  
2 rooms.

3

4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
6 Code § 51-53.)

7 34. Plaintiff repleads and incorporates by reference, as if fully set forth  
8 again herein, the allegations contained in all prior paragraphs of this  
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,  
10 that persons with disabilities are entitled to full and equal accommodations,  
11 advantages, facilities, privileges, or services in all business establishment of  
12 every kind whatsoever within the jurisdiction of the State of California. Cal.  
13 Civ. Code § 51(b).

14 35. The Unruh Act provides that a violation of the ADA is a violation of the  
15 Unruh Act. Cal. Civ. Code, § 51(f).

16 36. Defendants’ acts and omissions, as herein alleged, have violated the  
17 Unruh Act by, *inter alia*, failing to comply with the ADA with respect to its  
18 reservation policies and practices.

19 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty  
20 and discomfort for the plaintiff, the defendants are also each responsible for  
21 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

22

23 **PRAYER:**

24 Wherefore, Plaintiff prays that this Court award damages and provide  
25 relief as follows:

26 1. For injunctive relief, compelling Defendants to comply with the  
27 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
28

1 plaintiff is not invoking section 55 of the California Civil Code and is not  
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual  
4 damages and a statutory minimum of \$4,000 for each offense.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
6 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

7

8

9 Dated: January 18, 2021

CENTER FOR DISABILITY ACCESS



10

11 By: \_\_\_\_\_

12 Russell Handy, Esq.  
13 Attorneys for Plaintiff